UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 20 Cr. 497 (GHW)

DANIEL WALCHLI,

Defendant.

Sentence

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New York, N.Y.
April 2, 2024
10:00 a.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: OLGA I. ZVEROVICH
Assistant United States Attorney
-and-
NANETTE L. DAVIS
Special Assistant United States Attorney

MORVILLO, ABRAMOWITZ, GRAND, IASON & ANELLO, P.C.
Attorneys for Defendant
BY: JEREMY H. TEMKIN
RICHARD F. ALBERT
JOSHUA P. BUSSEN

Also Present: Dr. Andreas Lanzlinger

(Case called; appearances noted)

THE COURT: Good morning.

We're here to conduct a sentencing hearing for the defendant, Mr. Walchli. First, I note that in the past Mr. Walchli has proceeded without the need for the use of an interpreter. I've reviewed the transcript of our prior proceeding, and counsel assured me that one was not needed.

Counsel for defendant, can I hear from you; does the defendant require the services of an interpreter --

MR. TEMKIN: No, your Honor.

THE COURT: -- for these proceedings?

MR. TEMKIN: No, your Honor.

THE COURT: Thank you.

So it's your understanding that he will understand everything that's said here today.

MR. TEMKIN: Yes, your Honor.

THE COURT: Thank you.

Mr. Walchli, please let me know if at any point you have any difficulty hearing or understanding anything that's said here today.

THE DEFENDANT: Thank you, your Honor.

THE COURT: Thank you.

First, I've received and reviewed the following materials in connection with the sentencing:

First, the presentence report, which is dated March 7,

2024;

Second, the defendant's sentencing memorandum, which is dated March 19, 2024, together with its exhibits;

Third, the government's sentencing memorandum, dated March 26, 2024, together with its exhibits; and

Fourth, the defendant's supplemental sentencing submission, which is dated March 28, 2024.

Counsel, have each of the parties received all of those materials?

Counsel, first, for the United States.

MS. DAVIS: Yes, your Honor.

THE COURT: Thank you.

Counsel for the defendant.

MR. TEMKIN: Yes, your Honor.

THE COURT: Thank you.

I know that the defendant's sentencing memorandum had been filed with the clerk of the court subject to some redactions that I'd like to talk about now. The government's sentencing submissions were initially filed on the docket, but due to a docketing error, those were provisionally sealed. I'd like to talk about that as well.

First, counsel for defendant, I've reviewed the proposed redactions to your sentencing submissions. All of the defendant's redactions in colors other than blue are approved. They relate to health and other privacy information as to which

the defendant's and other privacy interests outweigh the presumption of public access in judicial documents.

Now, as to the redactions in blue, I just want to discuss them briefly, because I'm not sure why they all need to be redacted. The principal question, I think, here is about the nature of the ODVP program and whether and to what extent it requires the redaction of the identity of people that participated in that program. That's my principal question here.

MR. TEMKIN: Your Honor, we proposed that redaction out of courtesy to the government. My understanding, having done a number of voluntary disclosures, is that the identity of taxpayers who do voluntary disclosures is subject to 26 U.S.C. 6103, which is confidentiality of tax matters.

As your Honor will hear later, we think that there are some issues with the fact that taxpayers are able to avoid even public shaming by virtue of their participation in voluntary disclosure program. But it is, I think, practice to redact their names. The government has done so throughout, so we did so as a courtesy. I certainly have no objection to having their names unsealed.

THE COURT: Thank you.

Apart from that information, which the government, I expect, will argue should be protected as a result of the fact that the information was disclosed as part of the program,

there's other information that's also proposed to be redacted there that does not disclose identities of taxpayers who participated in the amnesty program.

Does the defense have any arguments in favor of those proposed redactions, or were those redacted, again, as a courtesy to the government?

MR. TEMKIN: Those were redacted because the names appear in the bill of particulars as unindicted coconspirators. The bill of particulars was filed under seal, so because we were disclosing materials that are otherwise sealed, we thought that it was appropriate to submit those in redacted form.

THE COURT: Thank you.

Does that relate just to the names?

MR. TEMKIN: The names, yes. It's the names, and certainly the positions of the individuals would effectively identify them by name. So by giving the position that the person holds, you're effectively identifying the person for the public.

THE COURT: Thank you.

Let me hear from the government about the names and I'll call it the broader description of the roles of the people involved.

Counsel for the government, let me hear your argument.

MS. DAVIS: Your Honor, Mr. Temkin is correct that we have limitations, based on Section 6103 of the Internal Revenue

Code, and we take that obligation quite seriously, so we try to err on the side of caution.

THE COURT: Thank you.

That's fine. Understood.

MS. DAVIS: Yes.

THE COURT: I appreciate that argument with respect to the people that participated in the program, and I think that that interest as well as the statutory authority cited by defendant are sufficient to outweigh the presumption of public interest in judicial documents. I should say with respect to this issue that the weight of the presumption is very low. The identities of the particular people involved has very little -- really, no -- weight in my decision-making here.

What about the other information?

MS. DAVIS: Your Honor, just as department policy does militate in favor of not publicly identifying unindicted coconspirators, I think the policy specifically refers to an indictment, but we also try to be cautious about it for privacy and reputational reasons, and that would be the reason to not identify those people by name. And I agree with Mr. Temkin that there are some instances where identifying them by position would lead one to easily identify them by name.

THE COURT: Thank you.

On this, as to the names, I appreciate the issue, but part of my concern about some of the proposed redactions --

again, the ones in blue -- is that they go to what I understand to be one of Mr. Walchli's arguments, which is that his conduct was not undertaken by him alone but that he went to others with respect to the conduct. That information is significant for my decision-making here, and it's not apparent from the face of the documents what those facts are with the redactions in the scope that had been proposed here.

Any other argument on this?

MS. DAVIS: Not from the government, your Honor.

THE COURT: Thank you.

Counsel for defendant, let me hear from you.

MR. TEMKIN: Your Honor, in redacting those names and the other identifying information, we were acting pursuant to, again, the fact that the coconspirator list was sealed and also aware of the Department of Justice's policy against essentially publicly shaming people who don't have an opportunity to appear and defend themselves.

THE COURT: Sorry. Let me just pause you.

Counsel for the government, let me point you, for example, to the defendant's sentencing submission, just to frame the conversation with more concrete information for us.

Look at the bottom paragraph on page 24 of their sentencing submission and the carryover paragraph. Let's start with the last sentence of that carryover paragraph on page 25.

Why should that be redacted?

MS. DAVIS: Your Honor, we would have no objection to that last sentence being unredacted.

THE COURT: Thank you.

And similarly, the redaction to the first sentence in that paragraph, what's the argument in favor of redacting that information?

MS. DAVIS: I think in that particular paragraph, your Honor, I think that if just the name is redacted, that that would be sufficient.

THE COURT: Thank you.

Good.

I'm going to approve more limited redactions with respect to the content that was redacted in the defendant's submissions in blue. I think that there has been a sufficient showing, as I described earlier, for redaction of the identities of the individual taxpayers who participated in the amnesty program for the reasons that I articulated earlier.

I also believe that there's sufficient justification for maintaining under seal the specific names that are identified in the redactions otherwise, but there's a substantial amount of information. For example, the one that I understand now to be undisputed, just for illustrative purposes, a statement that Holding's board approved the formation of Helvetic, including its role in the Singapore solution. Such statements regarding the board approval of Mr.

Walchli's accused conduct I don't think should be redacted. It has substantial weight in my assessment of the defendant's arguments regarding his role in this criminal conduct, and because of that, the weight of the presumption is high. And I don't think that there's a sufficient showing of a countervailing privacy interest that outweighs that presumption, so I'm going to approve the proposed redactions in blue by the defense insofar as they pertain to the specific identities -- that is, the names -- of the people involved. But otherwise, without a further showing, I'm not going to permit the remaining redactions that have been provided to the Court in blue in the defendant's submissions. And so I'm directing that the defense file a new version of those submissions with the more limited redactions that have been approved by me.

With respect to the government's submissions, as I understand it, the majority of the redactions are ones that are permitted under the rules in any event. Those are permitted under the rules. There are two redactions that are sought in addition to those. Those relate to the information provided on footnote 4 -- I'm sorry.

MS. DAVIS: Footnote 1, your Honor.

THE COURT: Thank you.

-- footnote 1 on page 4 of the government's sentencing submission. There, the information has very little weight --

really, no weight -- in the Court's decision-making. As a result, the presumption is very low. There is substantial privacy interest and perhaps other equities involving international comity which outweigh the presumption of public access to judicial documents, and so I approve that.

Counsel for the government, because the version that was filed online was the unredacted version, I don't know what the specific reference is to the other thing that you wanted to redact.

Is it the first name in bullet 1?

MS. DAVIS: Yes. There are a few instances, I believe, of the same name reference as in the defendant's motion that we've just covered. I think we did it in a more narrow way. Other than the redactions that are authorized by the Court's local rules, the other redactions were primarily in the exhibits, and they related to individuals who worked for the companies who otherwise had no role in anything.

THE COURT: Thank you.

Understood.

Those redactions are also approved. As counsel's argued, they have no role in the underlying offenses. Their identities have no bearing on the Court's assessment of this issue, and therefore, the weight of the presumption is very low. On the other hand, there are substantial privacy interests implicated by disclosure of their identities, given

that, as the government has described, they had no role in the incident itself.

Counsel for the government, I direct that you file the properly redacted versions of those documents on the public docket as promptly as practicable after today's proceeding and, in any event, no later than this Thursday.

Very good.

Counsel, are there any other submissions in connection with this sentencing?

First, counsel for the government.

MS. DAVIS: No, your Honor.

THE COURT: Thank you.

Counsel for defendant.

MR. TEMKIN: No, your Honor.

THE COURT: Thank you.

Let me turn, first, to counsel for defendant.

Counsel, have you read the presentence report?

MR. TEMKIN: Yes, your Honor.

THE COURT: Have you discussed it with your client?

MR. TEMKIN: Yes, your Honor.

THE COURT: Thank you.

Mr. Walchli, have you read the presentence report?

You can remain seated until I ask you to stand.

THE DEFENDANT: Yes, sir, your Honor.

THE COURT: Thank you.

Have you discussed it with your counsel?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you had the opportunity to review with your counsel whether there are any errors in the report?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you had the opportunity to review with your counsel whether there are any other issues with the presentence report that should be addressed by the Court?

THE DEFENDANT: Yes, your Honor.

THE COURT: Thank you.

Counsel for the United States, have you read the presentence report?

MS. DAVIS: Yes, your Honor.

THE COURT: Do you have any objections related to the factual accuracy of the presentence report?

MS. DAVIS: Not technically to the factual accuracy. We believe that the fine reference may have omitted the possibility, not on the first page but in the body of it, the possibility of twice the pecuniary gain or loss as an alternative fine measure.

THE COURT: Thank you.

Understood.

But there are no objections related to the factual --

MS. DAVIS: No.

THE COURT: -- accuracy of the presentence report, is

that right?

MS. DAVIS: That's correct, your Honor.

THE COURT: Thank you.

Counsel for defendant, do you have any objections related to the factual accuracy of the presentence report?

MR. TEMKIN: Your Honor, we do not.

I do want to call your Honor's attention to -- it was a footnote in the reply submission that we filed last week that noted that there was an error in the presentence report. Paragraph 85 referred to, attributed something to our statement of the offense, which we think is in error. I don't think it's a factual error. I don't think it's material, but I did want to make sure that your Honor was aware of that.

THE COURT: Thank you.

I am.

Counsel for the defense, I understand there are no objections related to the factual accuracy of the report. Is that correct?

MR. TEMKIN: That's correct, your Honor.

THE COURT: Thank you.

Given that there are no objections to the factual recitations in the presentence report, the Court adopts the factual recitations in the presentence report. The presentence report will be made a part of the record in this matter and will be placed under seal. If an appeal is taken, counsel on

appeal may have access to the sealed report without further application to the Court.

Now, although district courts are no longer required to follow the sentencing guidelines, we are still required to consider the applicable guidelines in imposing sentence, and to do so, it's necessary that we accurately calculate the advisory sentencing guidelines range.

In this case, the defendant pleaded guilty to Count One of the indictment in this case, which is numbered 20 Cr. 497. Count One charged him with conspiracy to defraud the United States.

Counsel for the United States, does the government agree that a two-level adjustment is appropriate here under Section 3E1.1(a)?

MS. DAVIS: Yes, your Honor.

THE COURT: And is the government moving for an additional one-level adjustment under 3E1.1(b)?

MS. DAVIS: Yes, your Honor.

THE COURT: Thank you.

I calculate the sentencing guidelines in a manner consistent with the presentence report. The applicable sentencing guidelines manual is the November 1, 2023, sentencing guidelines manual.

Pursuant to Section 2T1.9, I look to Section 2T1.4 to determine the base level for the offense.

Pursuant to Section 2T1.4(a)(1) and 2T4.1(g), the offense level is 18 because the agreed-upon loss tax is more than $250,000 but less than $550,000.

Because the offense involved the use of sophisticated means, a two-level increase is warranted pursuant to Section 2T1.4(b)(2).

Because the defendant has no criminal history points and the other conditions set forth in Section 4C1.1 do not apply, a two-level reduction is warranted pursuant to Section 4C1.1.

Because the defendant has demonstrated acceptance of responsibility for his offense through his plea allocution, I apply a two-level reduction pursuant to Section 3E1.1(a).

Upon motion by the United States, an additional one-level reduction is warranted under Section 3E1.1(b).

As a result the applicable sentencing guidelines offense level is 15.

The defendant has no criminal history points. As a result, the defendant is in criminal history category I.

I've considered whether there's an appropriate basis for departure from the advisory range within the guidelines system, and while I recognize that I have the authority to depart, I do not find any grounds warranting a departure under the guidelines.

In sum, I find that the offense level for this offense

is 15 and that the defendant's criminal history category is I. Therefore, the guidelines range applicable to this matter is 18 to 24 months' imprisonment.

Counsel, does either party have any objections to the sentencing guidelines calculation?

First, counsel for the United States.

MS. DAVIS: No, your Honor.

THE COURT: Thank you.

Counsel for defendant.

MR. TEMKIN: No, your Honor.

THE COURT: Thank you.

Counsel for defendant, do you wish to be heard with respect to sentencing?

MR. TEMKIN: Yes, your Honor.

THE COURT: Thank you.

Please proceed.

MR. TEMKIN: May I use the lectern, your Honor?

THE COURT: You may.

MR. TEMKIN: Your Honor, thank you very much.

First, as we get started, I'd just like to introduce Mr. Walchli's family and friends who are here today.

In the front row, starting with his friend Sean Kirby, who traveled up from Virginia to be with Mr. Walchli today, Mr. Kirby wrote a letter to your Honor, and his parents who also wrote a letter had intended to be here but could not

because of medical issues.

Next are Mr. Walchli's wife Antoinette and his daughters Virginia and Raffaela, followed by his brother Peter and his mother and stepfather, Margrit and Jean-Pierre Huber. All of the Walchlis have traveled, obviously, from Switzerland to be here with Dani today.

I know your Honor has read all of the materials that we've submitted, and I'll try to be brief this morning. I'll do my best.

Your Honor, the government has asked for a guidelines sentence. As your Honor knows, probation recommended a six-month sentence based on several mitigating factors that it has identified, and we have asked for a noncustodial sentence. We did not make that request lightly, your Honor, but we do believe that the factors set forth in Section 35553(a) and mitigating factors not addressed by the probation department warrant a noncustodial sentence.

I'm going to start by talking briefly about Dani's personal history and characteristics.

Section 3553(a) recognizes that while the defendant is obviously here because of the offense conduct, in determining an appropriate sentence, your Honor is permitted -- in fact, required -- to consider the entire person. And I think our sentencing memo and the supporting letters demonstrate that Dani is a good, decent, honorable person; came from a modest

background, in a small working-class community in Switzerland, to achieve substantial success, through hard work, dedication, and whose sole contact with law enforcement is a result of his involvement in what we call the Singapore solution.

First and foremost, the letters describe Dani as a loving husband, caring father, devoted son, loyal adviser to his brother. They describe him as a kind and decent man, who cares for elderly neighbors, who's an exceptionally hardworking executive but who, while he was demanding of himself, also was a mentor to his subordinates.

I was struck by the letters that Sara Nogly and David Keller wrote to your Honor, describing how Dani gave them opportunities to flourish, ensured that they would receive credit for success but also stood up for them if there were complaints. So he was the kind of supervisor who showed real support for his colleagues and genuine interest in their careers, as your Honor saw.

The letters also talked about Dani's commitment to leaving the world a better place than he found it. Your Honor, I know, read Dani's account of his trip to the Philippines and how he was struck by the poverty that he observed and how he felt a calling to do something about it. Fortunately, he was connected with the Child's Dream charity, based in Thailand, and that charity's mission of providing education and health care to poor children throughout Asia. As Mr. Jenni and

Mr. Siegfried wrote in their letter to your Honor, Dani's commitment was not just about giving money. He personally traveled to Thailand, the Myanmar border, Cambodia, to observe Child's Dream's work in person. He even went so far as to deliver laptops to the children.

Dani also introduced Child's Dream to his friends and family, who have become supporters of the charity as well, and it says something about Dani's commitment to leaving the world a better place. But of all the letters we submitted, the ones that sort of struck me most and said the most about Dani's character were the ones that described his commitment to the victims of the horrific bus accident involving several employees of Evaluserve in India.

As your Honor knows, Dani served on Evaluserve's board by virtue of his employer's investment in that company. Nothing in that position required Dani to take a personal interest or get personally involved in the lives of the victims of that accident. But after he heard about the accident, Dani was so concerned that he got on a plane and flew to Delhi to visit the victims personally and assure them they would be taken care of.

But this was not a perfunctory fly-by visit. Dani took a genuine interest in the lives of people he never met before. He personally made medical arrangements for victims of the accident, including Himanshu Sharma. And when Himanshu

later traveled to Switzerland for medical care, Dani and Antoinette visited him in the hospital, invited him and his brother to their home and generally made sure that they were comfortable in a strange country.

In his letter to your Honor, which is exhibit 15, Himanshu describes Dani as a pillar of strength for him and his family. If your Honor permits, I'll read a brief portion of the letter, where Himanshu says:

What makes Daniel's actions even more exceptional is the fact that at the time of the accident, he was a complete stranger to me. Our paths had never crossed before, and yet Daniel treated me as if I were a beloved family member. Daniel's selflessness and genuine actions exemplify the essence of humanity, proving that compassion knows no bounds.

Your Honor, I respectfully submit that the most genuine reflection of a person's character is how they behave towards others who they know will never be in a position to reciprocate. Dani's relationship with Himanshu and the other victims of the bus accident speaks volumes about his character.

Before I turn to the offense conduct, your Honor, I want to speak about one other aspect of Dani's character that I think bears mentioning and bears consideration.

Other defendants, both in this case and in other, similar cases, have opted to avoid facing the consequences of their conduct by staying in their home countries. One of

Dani's codefendants went so far as to jump bail when he was arrested in Spain. As your Honor knows, Dani could have stayed in Switzerland and waited out the Department of Justice. In fact, the defendants in the Wegelin case did just that, and ultimately, after nearly a decade, those defendants were rewarded for their intransigence and they were allowed to plead to misdemeanors. But Dani was not going to hide from the Court's jurisdiction. Instead, he directed us to notify the government of his willingness to come to the United States to face the charges.

Now, to be clear, it was to face the charges; before Dani pleaded guilty, we raised what we thought at the time, and still think, were meritorious motions. We challenged the crime conspiracy doctrine generally and especially its extraterritorial application in this case. We also challenged the application of the statute of limitations in light of the delay in unsealing the indictment. But after your Honor denied those motions, Dani agreed to plead guilty.

We understand that the government would have preferred Dani to waive extradition, plead guilty, cooperate before even returning the indictment, but in considering Dani's character, it cannot be that his decision to voluntarily come to the United States, when he could have remained in his home country for the rest of his life, deserves absolutely no consideration. So we ask your Honor to consider it as one of the mitigating

factors that weighs in favor of a noncustodial sentence.

Your Honor, obviously, Section 3553(a) requires consideration of the nature and circumstances of the offense and the need to afford just punishment. And Dani stands before your Honor having pleaded guilty to the one count, the sole count, of the indictment charging him with a conspiracy to defraud the United States, in violation of Section 371. I don't want anything I say to be interpreted as minimizing Dani's conduct. OK? But I think it's important to put that conduct in context and consider his culpability relative to the other participants in the offense.

Let me start with Dani joining Holding.

In 2004, he went to work at Holding, where his job involved, among other things, investing assets in various parts of the world, especially in Asia. Now, Holding also owned a private bank, PrivatBank IHAG, but it's important, your Honor, to stress -- it's important for me to stress -- that Dani did not work at PrivatBank IHAG. He did not set its policies. He did not oversee its bankers. He did not deal with its clients. The bank was an island within Holding. It had its own leadership, who were senior, experienced executives with longstanding relationships to the owner of Holding, and the owner oversaw the bank as its chairman.

Now, like other banks in Switzerland, for many years PrivatBank IHAG offered bank secrecy to depositors from around

the world, including the United States. And in 2008, while PrivatBank IHAG was adopting what's generally referred to as a disclose-or-leave policy with respect to its U.S. clients, the bank's general counsel and head of compliance, Michael Gubser, worked with people at Allied Finance to develop a, quote, solution. The solution was, in essence, a means of enabling high-net worth clients to evade the bank's own policy, to evade this new policy that the bank was adopting. And by December of 2008, Mr. Gubser and Mr. Schnellmann, of Allied Finance, had designed what we've come to refer to as the Singapore solution.

The Singapore solution, as the government goes into great detail in its submission, involved a series of transfers that would, in essence, enable PrivatBank IHAG to remove from the client files any reference to the fact that the accountholders were U.S. persons, that the ultimate beneficial owners were U.S. citizens and therefore had U.S. tax obligations.

So the idea was take an account -- and the file in the account shows that it's a U.S. account -- and make it a non-U.S. account. Mr. Gubser and Mr. Schnellmann had designed a way of doing that. Their initial design, as we pointed out to your Honor in our reply submission, their initial design involved another Singapore asset manager. But Mr. Gubser was aware that Dani was in the process of starting a Singapore asset manager for IHAG, for Holding, and that ultimately became

known as Helvetic. So in January of 2009, Mr. Gubser approaches Dani and asks whether Helvetic can be incorporated in the design that he and Schnellmann had already developed, so basically take out an unrelated asset manager and plug in Helvetic.

A couple of points bear emphasis here.

First, there's no dispute that when Dani developed Helvetic it was for legitimate purposes and that Mr. Gubser co-opted, hijacked the asset manager into the scheme that he and Mr. Schnellmann had otherwise designed.

Second, Dani did not have the authority, on his own, to approve the use of Helvetic in this way. Instead, as your Honor noted before, and as we've argued, he presented the issue to higher-ups at Holding, and it was only after those higher-ups approved Helvetic's role in the Singapore solution that Dani helped coordinate the efforts of the various participants in the Singapore solution. But it was based on the express approval and direction of the higher-ups at Holding.

Now, there were two round trips that took place in late 2009. They were round trips involving client family 1 and client 2. And early in 2010, so about a year after he first was approached by Mr. Gubser, Dani approved the invoices for the fees associated with the transfers. That was Dani's last active involvement in the Singapore solution -- the approval of

the invoices.

Now, I think it's undisputed that later in 2010, Dani became increasingly uncomfortable with his and Helvetic's role in the Singapore solution, and he attempted to persuade the powers that be that the Singapore solution should be terminated. When he raised the issue, the bank executives scorned Dani for being weak, and his attempt to terminate the Singapore solution was rejected. But the following year, Dani came back and again attempted to persuade the others to terminate the Singapore solution. This time he was successful, called the head of Helvetic, told him to get rid of the American clients, and after that call, Dani had nothing further to do with the Singapore solution accounts.

We subsequently have learned that Gubser and another defendant, Ivo Bechtiger, followed that up and moved the money so that the American clients could continue to conceal their assets. Now, again, nothing in my comments is intended to suggest that Dani did not violate U.S. law. But in considering the offense conduct as one of the 3553(a) factors, we ask your Honor to consider Dani's relative culpability. I think that in any tax evasion scheme, the most culpable participant is the U.S. taxpayers; obviously, it's their obligation to pay taxes that's evaded.

Now, the two largest accountholders were able to avoid the consequences of their years of tax evasion. Decades before

Dani was even involved, before he was even employed at Holding, these two taxpayers had been cheating on their taxes. But they were able to avoid any responsibility, culpability, even public shaming, as I've noted, by virtue of the voluntary disclosure program.

Dani, we submit, is also less culpable than the senior bank executives at PrivatBank IHAG and the financial professionals at Allied Finance who spent decades helping U.S. citizens evade their tax obligations, including through other sophisticated devices. There were years and years of sophisticated means of concealing accounts, including Liechtenstein foundations, Panamanian cooperations, BVI corporations. There were countless ways in which U.S. taxpayers concealed their accounts and were helped in doing so by bank executives and client relationship managers.

The senior executives at the bank and the financial professionals at Allied Finance designed the Singapore solution to enable their clients to keep the undisclosed assets at PrivatBank IHAG. Dani never met the clients who participated in the Singapore solution, but Gubser and Peter Ruegg, the bank's deputy CEO, had longstanding relationships with those clients. Rather than enforcing the bank's disclose-or-leave policy and push those individuals to participate in the voluntary disclosure program that was available in 2009, the bank executives developed the Singapore solution so that they

could continue to service those clients.

We also ask your Honor to consider that Dani's role or involvement in the Singapore solution was solely in his capacity as an employee of Holding. He did not exercise any supervisory authority over the bankers. He did not receive any additional compensation or a bonus as a reward for having participated.

Now, we respectfully disagree with the government's suggestion that Dani could have prevented the Singapore solution or that he had the authority to terminate it. Dani might have been able to tell Gubser that Helvetic would not play a role in the Singapore solution. He might have been able to do that, but as we pointed out in our reply letter to your Honor, Helvetic was not an essential cog in the scheme, in the Singapore solution. There was an original asset manager that was envisioned to be used, and if Helvetic was not available, there's no reason to think that Gubser and Schnellmann would not have found some other asset manager or means of effectuating that piece of the Singapore solution.

The government also argues that Dani was somehow uniquely situated to end the Singapore solution. But I think that's belied by what actually happened, because in 2010, when Dani tried to end the Singapore solution, his efforts were rejected. But Dani nonetheless did press to try to close the Singapore solution, and he ultimately succeeded in doing so in

2011.

Now, the government suggests that Dani should have forced the clients to disclose their accounts to the United States. But Dani didn't know the clients. He didn't have a relationship with the clients. What he was doing was terminating his role in the conspiracy. Now, should those accounts have been disclosed? Yes. But Mr. Gubser and Mr. Bechtiger decided to go off and continue to help the clients. But that wasn't Dani's decision.

I'm going to turn now, if your Honor pleases, to the issue of deterrence.

3553(a) directs that your Honor consider both general and specific deterrence in protecting the public from future crimes by the defendant. Nothing in Dani's background suggests that he is at all at risk of exposing the public to further criminal activity or that he needs specific deterrence in any way.

Throughout its submission, the government argues that the Court should send Dani Walchli, from Switzerland, to jail to deter U.S. taxpayers from cheating on their taxes. In the *Gardellini* case, which we cited to your Honor in our reply, now-Justice Kavanaugh questioned the value of general deterrence and the elevated importance that the government places on it in tax cases like this. But even setting aside questions of general deterrence in the ordinary case, the

government makes no effort to explain how sending a Swiss citizen, like Dani, to jail is going to deter U.S. taxpayers from cheating on their taxes. And the deterrence argument rings hollow when you consider that the government offered the U.S. taxpayers, who used offshore accounts to cheat on their taxes, not one, not two, not three, but four opportunities to participate in voluntary disclosure programs. And tens of thousands of U.S. taxpayers took advantage of those opportunities. And the government offered Swiss banks an opportunity to obtain amnesty despite the fact that for years and years and years they had benefitted from the substantial fees that were generated by U.S. clients.

Now, your Honor, taxpayers, to be clear, were eligible to participate in voluntary disclosure programs regardless of how long they had been cheating on their taxes, the size of the accounts, the amount of taxes that were evaded or the complexity, whether they held the account in their own name or they had a Liechtenstein foundation as a buffer. And banks were eligible to participate in the Swiss bank program and avoid any risk of prosecution. The only criteria was that they could not be under investigation in August of 2013, when the program was announced.

There were 14 banks that were under investigation at that time. They were category 1 banks; they were ineligible. Every other bank in Switzerland had the opportunity to

participate in the program, get a nonprosecution agreement in exchange for disclosing certain information regarding their offshore activities and paying a penalty -- again, unrelated to how many U.S. clients they had, the size of their U.S. accounts, the amount of taxes evaded or the sophistication of the schemes. None of that mattered. All they had to do was come forward.

I am not criticizing -- and I want to be clear on this. I'm not criticizing the Department of Justice and the IRS for having offered the Swiss bank program to the banks or the voluntary disclosure programs to the U.S. taxpayers. Those were policy decisions they were well within their right to make. But having made the policy choice to immunize over 56,000 taxpayers and 84 Swiss banks, I think that says something about general deterrence. And I think it's far-fetched to think that prosecuting Dani Walchli is going to somehow send a message to the U.S. taxpayers that they now have to comply with their tax obligations.

As we pointed out to your Honor, in two cases in the Eastern District of Virginia, in 2015 -- so about nine years ago -- the Department of Justice told a district judge sentencing two Swiss bankers that -- and I'm going to read from the sentencing memos that were submitted -- broad participation in the IRS voluntary disclosure programs indicates that the message of general deterrence has been widely received by U.S.

citizens seeking to return to or otherwise enter into compliance with the U.S. tax system.

That's the Department of Justice, in 2015, telling the judge in Virginia that essentially general deterrence has been achieved.

Now, there's no effort to explain what happened in the intervening nine years that causes general deterrence to now be of the essence and to require sending Dani to jail to deter U.S. taxpayers.

The government's deterrence argument, to be fair, is not limited to deterring U.S. taxpayers. The government also talks about deterring other individuals, what are generally referred to as enablers. But in the 14 years since this case, since the offense conduct in this case, there's been an enormous shift in the international banking industry, and I think it's important to recognize, as we sit here in 2024, that the world is very different than it was in 2013, when the government offered the Swiss bank program, or even in 2009, when Dani first got involved in the Singapore solution.

The U.S. and Swiss governments have sought to bring taxpayers and banks into compliance, and the United States Congress has passed, and the Treasury department has implemented, the Foreign Account Tax Compliance Act, generally referred to as FATCA. And FATCA is an important piece for the international enforcement mechanism that mitigates the risk of

undisclosed offshore accounts.

So your Honor, with respect to deterrence, we respectfully submit that sending Dani Walchli to jail is not going to serve the interest of general deterrence.

The next factor I want to turn to is the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct -- similar conduct.

In our submissions, we addressed parity from several different perspectives. First, we noted the judicial sentencing information data that was incorporated into the PSR and data published by the sentencing commission. What both of those sources demonstrate is that the majority of defendants convicted of tax offenses received substantial variances below the sentencing guidelines, and many of those defendants received noncustodial sentences. In fact, adjacent data provides that 36 percent of defendants, with Dani's guideline range, convicted of tax offenses with Dani's guideline range and criminal history category, received noncustodial sentences. 36 percent of the 105 defendants, noncooperating defendants, got noncustodial sentences.

We also looked at sort of the cohort of U.S. taxpayers who used undisclosed accounts to cheat on their taxes, and both in this district and around the country, the majority of the relatively few U.S. taxpayers who have been prosecuted for

offenses relating to offshore accounts received noncustodial sentences, and virtually all of those defendants received substantial variances.

Finally, in our submission, we address the 18 so-called enablers who were convicted in the United States for conduct relating to facilitating U.S. taxpayers' tax evasion. Unlike Dani, for decades, these defendants chose to make their living facilitating tax evasion by U.S. customers and U.S. taxpayers. We respectfully submit that all of them were more culpable than Dani in terms of how long they had acted to enable the U.S. taxpayers, the number of clients that they serviced, the size of the accounts that they serviced and the amount of taxes that their clients evaded. And only two of the 18 were sentenced to any period of incarceration.

Now, of the three defendants who, like Dani, are not getting credit for cooperation, only Urs Frei, of Wegelin, received any prison time. Unlike Dani, Mr. Frei and his two codefendants did not voluntarily come to the United States to face the charges. They waited out the government, stayed in Switzerland for nearly a decade before they negotiated misdemeanor pleas.

Now, we believe that Dani is less culpable of all three of the Wegelin defendants, but he's certainly less culpable than Mr. Frei, and we ask your Honor to consider that while Mr. Frei has spent years managing undeclared accounts for

U.S. taxpayers, he ultimately serviced up to 70 clients with approximately $250 million in assets. Notwithstanding that conduct, he was sentenced to two months in prison and a $10,000 fine. In light of the sentences imposed on Mr. Frei and his codefendants, sending Dani to jail would create an unwarranted sentencing disparity, your Honor.

Now, in response to the parity argument, the government presents a chart of 67 cases that, based on the docket numbers, appear to go back to 2009. I want to address the government's chart because I think it's not reflective of how courts should be considering or do consider parity. The government's chart goes back 15 years, but we looked at the last 10 years.

In the past 10 years, over 5,000 defendants were sentenced for criminal tax offenses across the United States. The government's chart refers to 67 of those. Now, most of the defendants on the chart are U.S. taxpayers who evaded their own tax obligations or whose conduct was otherwise not comparable to Dani's. For example, one case involved the owners of Tony Luke's Cheesesteaks in south Philadelphia, who failed to report more than $8 million of cash receipts and paid their employees under the table. Another involved a tax protester from Oregon who cheated on his taxes for 20 years.

The government makes no effort, and I can't discern any explanation of how the defendants in that chart, how their

conduct is somehow comparable to Dani's, such that those sentences -- which, by the way, include a number of significant downward variances -- but how those sentences are at all necessary to eliminate a sentencing disparity among like defendants who are convicted of like conduct.

Finally, your Honor, we have set forth in our papers another aspect of sentencing parity, and that relates to the sentences that are available to your Honor.

In its submission, the government says Dani should not get any credit for voluntarily coming to the United States to face the charges because that's what any U.S. citizen would be required to do and he should be treated the same as those people; that because a U.S. person charged with those crimes would have to stay in the United States and answer the charges, Dani should not get credit for coming from Switzerland to face the charges. Your Honor, this ignores the one essential fact of what will happen if your Honor imposes a sentence of incarceration.

If your Honor imposes a sentence of incarceration, Dani will be treated significantly worse than a comparable offender who receives an identical sentence but is a U.S. citizen. So U.S. citizens get far better treatment by the Bureau of Prisons than a Swiss national who comes to the United States to face charges. That's an important consideration, we respectfully submit, your Honor. U.S. citizens convicted of

tax crimes almost always go to federal prison camps, and the conditions at those camps are significantly less onerous than other prison facilities, including the low prison facilities that Dani would be eligible to serve his sentence at.

Under BOP policies, Dani is ineligible for a prison camp, which means that any period that Dani spends of incarceration will be significantly harsher than an identical sentence that's imposed on a U.S. citizen convicted of a tax offense.

In addition to being more difficult, any sentence your Honor imposes will result in Dani spending more time in custody than a U.S. citizen who receives an identical sentence. Upon his conviction, Dani will be deemed a deportable alien, which means that, unlike a U.S. citizen convicted of a tax offense, he will be ineligible to serve the last 10 to 20 percent of his sentence in community confinement and home confinement. And at the conclusion of his sentence, Dani will be transferred to ICE custody, where he will be held pending deportation.

Now, we've discussed this issue with the government, and they have proposed that Dani enter into an order of judicial removal, which will shorten the amount of time that Dani will have to spend in ICE custody. And we appreciate the government's efforts in this respect, but the problem is it's actually a catch-22, because if Dani has an order of judicial removal entered before he goes to the Bureau of Prisons, he

will be ineligible for FIRST STEP Act credit.

I want to try to quantify this point for your Honor.

Our understanding is that if there is an order of judicial removal and your Honor were to impose the six-month sentence that the probation department recommends, Dani will serve the full six months in a low-security facility and will then be transferred to ICE custody to be deported. By contrast, a U.S. citizen who receives the same six-month sentence will be eligible for 50 days of FIRST STEP Act credits and could be released from his prison camp -- not a low facility, a prison camp -- in a little over three months if he receives the earliest possible release to a halfway house.

Now, we tried to resolve this issue by asking if ICE would commit to allow Dani to self-deport, which we understand would enable him to receive FIRST STEP Act credits and avoid ICE detention and might even enable him to be designated to a camp. Unfortunately, ICE was unwilling to make that commitment or, quite frankly, show any flexibility at all on the issue. The only way we can see to avoid this conundrum is for the Court to enter an order similar to the one that Judge Rakoff entered in Frei, where he ordered that the defendant be permitted to self-deport, ordered ICE not to lodge a detainer and expressed the intent that the order would enable the defendant to serve his sentence at a prison camp.

Unfortunately, your Honor, my understanding is that

even if your Honor were to enter such an order, there is no assurance that ICE and the Bureau of Prisons would follow your Honor's recommendations. So there's no way to guarantee that this issue of parity in the sentence that is actually served is achieved.

THE COURT: I'm sorry. Can I just ask a question.

MR. TEMKIN: Yes.

THE COURT: The Frei order by Judge Rakoff that you just described, was it an order or a recommendation?

MR. TEMKIN: It was an order, and I can hand it up to your Honor.

THE COURT: Please do.

MR. TEMKIN: May I just show the government?

THE COURT: You may.

Thank you, counsel.

You can proceed.

MR. TEMKIN: Your Honor, I'm going to close now by, again, thanking your Honor for the time and attention that you've devoted to the case and for permitting me to go on longer than I had thought I would this morning.

I want to repeat. We did not ask for a noncustodial sentence lightly, but for all the reasons that we discuss in our papers and that I've discussed today, we respectfully submit that the facts of this case, considered in light of the statutory factors, justify such a sentence, and we urge your

Honor to balance punishment with mercy and to allow Dani to return home to Switzerland with his family.

Thank you, your Honor.

THE COURT: Thank you, counsel.

Let me turn to the defendant. Would you like to make a statement to the Court?

THE DEFENDANT: Yes. Yes, your Honor.

THE COURT: Thank you.

THE DEFENDANT: Shall I make it from here or --

THE COURT: Wherever you feel most comfortable.

THE DEFENDANT: Your Honor, thank you for giving me the opportunity to speak to you today and for reading my letter. And please also excuse that I have a paper in front of me. I wouldn't do that normally, but this is a very difficult and emotional time for me, and I just want to ensure that I don't forget anything I want to speak today.

I want to say here and now the most important thing. I deeply regret what I have done, and I want to apologize to you, your Honor, to the government and to the American people. I know it was wrong to have participated in helping American taxpayers to continue to conceal their accounts at PrivatBank IHAG. I have no one to blame for my actions than myself. And I sincerely apologize for my role in the Singapore solution.

It has been a long and very difficult time for me to get here today. For me it has been ongoing for nearly 14 years

now. My actions not only caused me to feel ashamed but have also caused sorrow and pain to my family. I, therefore, also want to apologize to my family -- sorry -- and tell you that your caring love has helped me so much.

To my wife Antoinette and our daughters Virginia and Raffaela, my mother Margrit and her husband Jean-Pierre, my brother Peter and my close friend Sean Kirby, thank you so much for supporting me and being here today.

I also want to thank John Kirby and Sherry Kirby, who wanted to be here today, but for medical reasons, unfortunately, they couldn't come.

I will never be able to thank you enough for your love and your support over the past several years.

Virginia and Raffaela, I am so very sorry to have brought so much suffering into your lives. I will never be able to forgive me for this.

Your Honor, the only hope I have is that I'm given a second chance, that I can close this chapter and so my family and I move past this.

Thank you very, very much, your Honor, for listening to my words.

Thank you.

THE COURT: Thank you.

Counsel for the United States, does the government wish to be heard with respect to sentencing?

MS. DAVIS: Yes, your Honor.

THE COURT: Thank you.

Please proceed.

MS. DAVIS: Your Honor, what the defense has urged for this defendant, who engaged in some of the most brazen conduct that we've seen in the Swiss banking world, is an utter lack of accountability: no jail time, apparently no fine; rather, just that he be able to go back to Switzerland to live his comfortable life, without any cost to him other than the cost of having to go through this prosecution.

I'd like to add some additional context to the facts that were highlighted by Mr. Temkin.

First, it's very important to note that the development of the Singapore solution and its subsequent implementation happened at a time where very, very publicly the United States was bringing law enforcement actions against Swiss banks, the first Swiss bank being UBS. The investigation of UBS became public in mid-2008, and in February of 2009, UBS entered into a deferred prosecution agreement with the United States. Along with that was what's called a John Doe summons, which was directed to UBS to try to get them to disclose the names of U.S. accountholders who were hiding income and assets at UBS.

Ultimately, this procedure and the law enforcement activities resulted in some names being produced to the United

States. But not all names. Ultimately, Swiss banking secrecy prevailed and prevails to this day in terms of the government's ability to obtain the names of specific accountholders. I heard just this week from a Swiss attorney that they couldn't disclose to us particular information that we had requested because of Swiss bank secrecy.

Your Honor, I don't usually interject my own personal experiences in this, but I was a manager of the Swiss bank program on behalf of the Department of Justice tax division. I sat through conduct disclosure meetings for over 80 Swiss banks who opted to participate in the Swiss bank program, and I can tell you that the Singapore solution stood out among the conduct that was disclosed to the United States by those Swiss banks for its absolute brazenness in developing a brand-new fraud scheme to help clients who were refusing to participate in the options that were available to them, the OVDP, continued to hide their assets and continue in that way to earn fees for the enablers, the bankers and the fiduciary services firm.

It was brazen. It involved not one, not two but multiple countries, the establishment of dozens of entities in places like BVI. It required the agreement of Mr. Walchli as the head of Helvetic and its participation, which, contrary to the statement of Mr. Temkin, there was no hijacking of Helvetic. Mr. Gubser approached Mr. Walchli, who was the head of Helvetic, down to choosing its logo, and Mr. Walchli

interposed no objections to that, agreed to it, and that is how Helvetic got intimately involved as a key player in this.

It was Helvetic in whose name the evaded taxes were coming back to IHAG. It was Helvetic in whose name the accounts were held. It was Helvetic who was overseeing the KYC that was required by Singapore. It was Mr. Walchli, who was the director of Helvetic, and was the person tasked by his boss to lead the charge into Asia for IHAG. Unfortunately, that charge was led on the back of the United States taxpayers.

And it's clear that Mr. Walchli had every intention of trying to service undeclared taxpayers even after the UBS deferred prosecution agreement became public. We have to look no further than exhibit 2 to the government's submission, which are board meaning minutes for AFP Holding, which was the Hong Kong entity that had been purchased by IHAG Holding's Asia subsidiary that was being used as part of this, because the money was jumping through Hong Kong and they needed entities and they needed bank accounts, and that was AFP Holding's role.

Mr. Walchli was a member of that board, and we see the minutes from May 2009, where the client structures were being discussed based on charts that were provided by Mr. Walchli. And it lays out five different options that might be used by taxpayers to continue, using Mr. Walchli's own words, having their black money remain black.

It's quite clear that Mr. Walchli -- you can see on

the last page, at the bottom -- was the author of those minutes. He understood everything about how these schemes were supposed to work. He's also offering up other options, like insurance wrappers, and I can refer the Court to the deferred prosecution agreement with Swiss Life insurance company that was a purveyor of those insurance wrapper options that many Swiss banks offered to their clients. Those were the kinds of solutions that Mr. Walchli was trying to develop, that Mr. Walchli was entertaining as a board member of AFP Holding.

So far from being what appears, if you take Mr. Temkin's words, an attempt to portray Mr. Walchli as this poor, innocent person who was swept into this unfortunate scheme, Mr. Walchli was an essential part of the development and implementation of this brazen tax fraud scheme. But if you follow Mr. Temkin's recommendation, Mr. Walchli will suffer no accountability here in the United States criminal justice system.

Certainly the tools that are available to the Court are somewhat blunt. It's basically jail time, money. You know, sometimes there are other options. But here, we submit that the appropriate sentence is a within-guidelines sentence that has, by virtue of the guidelines computations, already accounted for his acceptance of responsibility and already accounted for the fact that he is a first-time offender. That would help bring home the message to other offshore enablers

that the United States is not fair game for their schemes.

I tell you, your Honor, notwithstanding Mr. Temkin's rosy picture of the state of offshore compliance, those enablers are still out there. They are still helping United States taxpayers evade their taxes, and the schemes are getting more and more complex as the Department of Justice's efforts have gotten deeper and deeper into their world.

With respect to the other Swiss enablers, there was -- and that model has somewhat changed -- for the longest time a pretty odious business model in Switzerland, whereby much of their economy was driven by servicing clients who were doing nefarious things, like evading taxes, money laundering, hiding income and assets from their respective governments, and the Swiss bankers that Mr. Temkin referred to were employees of those banks that engaged in that odious conduct.

The IRS has attempted in many different ways to try to reach what are very, very difficult accounts to uncover. One of the primary ways is, as Mr. Temkin acknowledges, the offshore voluntary disclosure program. The fact that there were tens of thousands of accountholders who came in -- and I believe the amount collected through that is upwards now of $10 billion -- is a testament to the depth of the problem. And each one of those U.S. taxpayers was enabled by a person entrenched in the Swiss banking industry.

Now, we acknowledge that Mr. Walchli was not a Swiss

banker. He worked for the holding company, but I don't see that that's a meaningful distinction when you look at what he actually did and how deeply he was involved here. He was a key player in this, notwithstanding Mr. Temkin's assertions that everybody else was more culpable than he.

We have no reason to be able to verify, other than Mr. Walchli's words, that he tried in 2010 to put a stop to the Singapore solution, unsuccessfully, quite apparently. In 2011, he did convince the bank to kick the clients out, but there were no efforts made by Mr. Walchli or any of the other participants to ensure that those clients became tax compliant. Rather, what they were doing -- and I note that in 2011, four Credit Suisse bankers were indicted -- they were getting rid of the hot potato of those undeclared clients and, as it turns out, assisting them overall in going to Singapore bank accounts, in new entity names, continuing the scheme for a number of years.

In short, your Honor, no jail time for Mr. Walchli would send no message whatsoever of deterrence to others situated like him. The fact that they've highlighted the suffering that he has apparently undergone in the last 14 years -- and we've heard it from Mr. Walchli today, and I feel deeply sorry for his family -- he had every opportunity to come in, at least by 2014, when we understand that Mr. Temkin was hired to represent him. But rather, he did not do that. He

played a wait-and-see game, and he waited until he had lost his motion to dismiss to plead guilty. That's his right to do, and we do not quarrel with that, but he should not be rewarded somehow for the suffering that he purported to go through in the intervening years, when the length of time was of his own making and of his own choice.

Your Honor, it's always a difficult thing to contemplate the sentence of someone who otherwise appears to have led a good, decent and honorable life. But he did not engage in good, decent or honorable conduct when it came to the Singapore solution. We still don't know why he did it. We've proffered to you a theory in the government's submission. Perhaps it was nothing more than wanting the approval of his boss. Perhaps it was wanting to maintain his position at IHAG Holding and not incur the wrath of the people he worked with. But whatever it was, he had a choice. He made it, and it resulted in not only lost tax revenue to the United States, but it resulted in multiple regulatory actions by the countries who were impacted, including Germany, Singapore and Switzerland, where FINMA made inquiries of the bank when they heard about the Singapore solution.

Mr. Walchli has been a very fortunate man in comparison to so many and so many who have come before this Court.

We attempted to work with his lawyers regarding a

consent judicial removal order, which was rejected. Your Honor, we believe that the only fair sentence, given all of the factors under 3553(a), is a term of imprisonment. We submit that the appropriate term falls within the sentencing guidelines.

If there are no questions, your Honor, we rest on our papers.

THE COURT: Good. Thank you, counsel.

MR. TEMKIN: Your Honor, may I just have one moment --

THE COURT: Yes.

MR. TEMKIN: -- to talk with Mr. Albert and Mr. Bussen?

THE COURT: Yes, you may.

Let me do this. I was going to propose that we take a very short recess. We've been here for a little while, and I want to give everybody a chance to stretch their legs, so I'll take a short, five-minute break. Please confer during that period, and I'll hear any further argument that the defense wants to offer.

I'll see you here shortly.

MR. TEMKIN: Thank you.

(Recess)

THE COURT: Thank you.

Be seated.

Good.

Thank you.

Counsel for defendant, anything else from you?

MR. TEMKIN: Your Honor, very, very briefly.

First, with respect to Ms. Davis's last point about the thesis that they posited for why Dani would have engaged in the conduct, Dani had an enormously successful career at IHAG, at Holding. There was no financial gain, and it's speculation to think that somehow these clients were essential to the success of Helvetic.

The point that I was making with respect to Gubser's co-opting of Helvetic is there's no question that Dani was developing a legitimate asset manager for purposes wholly unrelated to concealment, account concealment, and we know that because Helvetic survived many years after those accounts were closed. So those accounts were in no way central to Helvetic, and there's no reason to believe that they somehow furthered or enhanced Dani's career.

Second, Ms. Davis was obviously very, very active in the Swiss bank program, and the design of the Swiss bank program was in many ways ingenious in how it pitted different constituencies against one another. I, too, was pretty active in the Swiss bank program, your Honor, and I find it hard to believe that this was the most brazen conduct that the 84 banks that were immunized by virtue of the Swiss bank program engaged in.

Finally, with respect to the comment about FINMA, FINMA is the bank regulator in Switzerland, and I understand that they actually investigated all banks that participated in the Swiss bank program, the conduct that was disclosed. So I don't think that there's anything special about the fact that FINMA looked at the Singapore solution.

Your Honor, I really do appreciate the time and attention that your Honor has given to this matter, and unless your Honor has any questions, I'll sit down and rely on the papers.

THE COURT: Thank you.

Counsel, is there any reason why sentence should not be imposed at this time?

MS. DAVIS: No, your Honor.

MR. TEMKIN: No, your Honor.

THE COURT: Thank you.

I'll now describe the sentence that I intend to impose, but counsel will have a final opportunity to make legal objections before the sentence is finally imposed.

As I've stated, the guidelines range applicable to this case is 18 to 24 months of imprisonment. I've considered the guidelines range. Under the Supreme Court's decision in *Booker* and its progeny, the guidelines range is only one factor that I must consider in deciding the appropriate sentence. I'm also required to consider the other factors set forth in 18

U.S.C. Section 3553(a). These include:

First, the nature and circumstances of the offense and the history and characteristics of the defendant;

Second, the need for the sentence imposed to (a) reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense, (b) to afford adequate deterrence to criminal conduct, (c) to protect the public from further crimes of the defendant, and (d) to provide the defendant with needed education or vocational training, medical care or other correctional treatment in the most effective manner;

Third, the kinds of sentences available;

Fourth, the guidelines range;

Fifth, any pertinent policy statement;

Sixth, the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

Seventh, the need to provide restitution to any victims of the offense.

Ultimately, I'm required to impose a sentence that is sufficient but no greater than necessary to comply with the purposes of sentencing that I mentioned a moment ago.

I've given substantial thought and attention to the appropriate sentence in this case, considering all of the 3553(a) factors and the purposes of sentencing, as reflected in

the statute. Based on a review of all of those factors, which I'm going to discuss in much more detail in a moment, I intend to impose a nonguidelines sentence of time served. I do not expect to impose a term of supervised release. I expect to impose a fine. I do not expect to issue an order of restitution. I'm going to impose the mandatory fee of $100. I'm going to discuss each of those issues with more specificity after I've reviewed my reasoning, which I'm going to go into in more depth now, starting with the nature of the offense.

Let me just start by saying the nature of Mr. Walchli's crimes was very serious. Tax fraud is a very serious crime. Many of us have heard the famous quote by Justice Holmes, who wrote that "taxes are the price we pay for a civilized society." So for those of us who facilitate not paying taxes, look around. It's the price we pay for a civilized society. The people who evade that duty and people like the defendant who facilitate its evasion are committing a very serious crime, one that undermines a civic society. The government's work in this arena is very important. It is prosecuting serious crimes and working to stop corrosive practices that undermine our civic society.

Now, I'm not going to try to outline all of the details of the so-called Singapore solution that PB IHAG developed to help some of their American clients to hide their money. It's all thoroughly explained in the presentence report

and the various submissions by the parties. I, like the government, view it as being sophisticated, dastardly in its effort to hide these clients' assets from the government. I will not recite all of its details, but I'll just say a few words, in part, in order to put the defendant's participation in the scheme into context.

As we've heard, the defendant was employed by IHAG Holding, a holding company. He started working there in 2004 and became a member of its executive board in 2006. It was in early 2009, in response to stepped-up enforcement in the United States, that PB IHAG, a Swiss bank that was an affiliate of IHAG Holding, the company for which the defendant formerly worked, adopted a policy that would require Americans with deposits there to disclose their accounts to the IRS or would require them to leave the bank. But the bank had three significant American clients who did not want to do that. Those accounts had about $60 million in them, so the company's top lawyer, acting at the direction of the bank's executive management and without the defendant's knowledge or involvement, approached a codefendant, Mr. Schnellmann, about developing the Singapore solution. That lawyer, top lawyer, worked with Mr. Schnellmann, Mr. Lampert and others at Allied Finance to develop the solution which essentially involved laundering money through a Singapore-based money manager, which would then deposit the funds in PB IHAG in its own name -- a

complex scheme involving moving money through multiple boxes internationally and obscuring the identities of the depositors. It was a sophisticated, complex scheme.

The scheme was developed and structured with the guidance of senior management at the bank, who counsel for defendant described as higher-ups, who are not before me here, and others who are being prosecuted but who have largely evaded capture. Those people developed the scheme without the defendant's involvement. Mr. Walchli got involved because several years earlier he'd been tasked with exploring ways for IHAG Holding to enter the Asian market. In doing so, he developed an asset management business, which we've heard about today, called Helvetic.

I highlight that his codefendants had another Singaporean entity in mind when they developed the scheme, and again, ironically, it was the top lawyer and risk manager at the bank who approached the defendant about using Helvetic in the scheme. Before he agreed to do so, the defendant sought the approval of higher-ups in the company's management. He also disclosed it to the company's board, and the company's board approved the conduct.

Mr. Walchli then participated in the project from about, until about 2011, or at least Helvetic did. During that period, the three U.S. families engaged in a series of complex transactions to round trip their funds to PB IHAG to avoid

paying U.S. taxes.

Now, I understand that Mr. Walchli proffers that he grew uncomfortable with the structure in 2010 and asked his superiors to stop using the solution. I'm told that they declined to do so when he first asked. I've heard today and in the sentencing submissions that the bank's employees scorned the defendant for his attempt to stop their use of the solution. Eventually, in 2011, I understand it's undisputed that the defendant asked to cut Helvetic out of the Singapore solution, and it was at the defendant's initiative.

Two of the three U.S. families for whom the Singapore solution was developed ultimately participated in the IRS's offshore voluntary disclosure program. Through that program, those two families disclosed their illegal offshore banking activities. They paid restitution. They paid penalties, all in exchange for amnesty and anonymity. Because they participated in the program, the principal beneficiaries of the program are not being prosecuted. One person who used the solution, Mr. Chinn, was prosecuted. He pleaded guilty, forfeited a number of offshore assets and was sentenced to probation with, I think, 18 months of house arrest.

So, this is a very serious crime. I do not undermine it. The development and use of the Singapore solution was sophisticated. It was wrong. It defrauded the government. The defendant knowingly engaged in that complex fraud.

At the same time, I believe that the defendant was one of the least culpable people involved in the scheme. He did not develop the scheme. It was developed by others. He was a later addition to the scheme. He was recruited to it because the business that he had developed for legitimate reasons was viewed as being capable of playing a role in the scheme. He was not personally involved in the client relationships that the scheme was designed to preserve. Again, the defendant was approached to participate in the scheme by the company's top lawyer and compliance officer, and he sought and obtained clearance from "higher-ups" and the board before he moved forward. So I recognize that he had a meaningful role, but I do not believe that he was as culpable as a number of his codefendants or perhaps others who have not been charged, and was not nearly as culpable as the taxpayers who have been granted amnesty by the government and, as a result, have not faced the threat of prosecution or the collateral consequences of it.

So, this is a serious offense, but I think it's important to consider not just the overall seriousness of the Singapore solution; I think it's important to target the nature of the defendant's participation in it and the circumstances that led to his engagement in it and the circumstances related to his withdrawal from it.

The defendant was born in May 1967 in Zurich,

Switzerland. He's 56 years old today. He was raised by both of his parents there in what was described as an upper middle-class life style. The government describes his life as comfortable. His family was close-knit. He's been married to his wife, who is here today, since 1999. The couple have two adult children, who are both here. His entire family remains very supportive of him, as is reflected in the numerous letters that I've received from all of them.

I've read all of the letters submitted in support of the defendant in connection with this sentencing, and I take from them that in many other aspects of the defendant's life, he has been a generous, committed, hardworking person and one that in particular in connection with his dedication to charity and his assistance for the victims of the bus accident in India is arguably exemplary. His commission of this offense appears to be aberrational. And again, in my view, it's significant that he participated in it only after having requested and received the endorsement of higher-ups at his company and its board of directors and that he did so after being solicited to participate in it by the chief risk officer, the person charged with compliance at the bank.

The defendant is blessed with generally good health. He has no history of mental health issues or substance abuse issues. The defendant graduated from university in Switzerland and has an MBA from the University of Rochester. He enlisted

in the Swiss army. He was there for a period of six years, over the course of which he achieved the title of lieutenant. He has a long history of legitimate work in banking and finance and I'll call it management. He started off at ZKB before moving to IHAG Holding in 2004. He worked there for 18 years, first as vice president for strategy and business development, and then he moved to a position on the company's executive board. He's principally involved in business development and investment strategy. His work, as I understand it, did not generally involve client relations with customers of PB IHAG, the bank at the center of this scheme.

The defendant has no prior convictions for criminal conduct.

Now, I've considered what is a just punishment in this case.

I'm also required to consider the deterrent effect both on Mr. Walchli personally and the need to deter others from committing this type of offense, which we refer to as general deterrence.

I think that the need for personal deterrence here is very low. I think that for a number of reasons:

First, the defendant committed this offense over a decade ago. We have no information that he was involved in criminal conduct since he took the steps to withdraw the Helvetic entity from the scheme. The indictment in this case

wasn't unsealed until about eight years after one of the families participated in the OVDP program, presumably disclosing this scheme, so there was not a rush to stop him.

Second, the defendant only engaged in this crime after being requested by his employer, after receiving the express OK from higher-ups; he did not financially benefit from the offense.

Third, Mr. Walchli does not have a financial need to commit further crime.

Fourth, I think that the defendant's approach to this indictment supports the view that he has accepted responsibility for the offense both through his willingness to appear in the United States to face it and his subsequent conduct and engagement since his indictment.

Now, I put little weight in the government's argument that I should not value his willingness to come to the United States to face the charges because he wanted to protect his ability to travel abroad. I think that argument undervalues the challenges of exposing oneself to prison, and the conduct by Mr. Walchli's codefendants illustrates what I think is the fallacy of the argument. They've decided to stay in Switzerland rather than face that risk. So I, therefore, take that Mr. Walchli's willingness to come to the United States demonstrates a commitment to accepting responsibility for his negative behavior, and I think that that is worthy of note.

And I think it supports my view that the need for personal deterrence is low. His acceptance of responsibility weighs in favor of a lesser sentence.

Now, I've weighed the need for general deterrence in this case.

I think that this is a factor that requires serious consideration. I agree with the government that facilitators of this kind of tax fraud against the United States should be deterred from that type of conduct. Still, this is just one of many factors that I must weigh in assessing the 3553(a) factors, and I don't believe that it requires a greater sentence in the context of the assessment of all of those other factors.

I note, among other things, the serious collateral consequences of the offense. I accept the shame and psychic toll of prosecution. I also note the length of time between the date of the conduct and today's sentencing.

I've considered the defendant's ability to use any period of incarceration for education or vocational training, medical care or other correctional treatment.

Given the defendant's education, job history and health and his financial conditions, I think that this factor weighs heavily against an incarceratory sentence.

I've considered the kinds of sentences available.

I do not believe that a term of imprisonment is

necessary in this case.

I've given serious consideration to the guidelines and the policy statements.

I believe that a nonguidelines sentence here is appropriate based on my assessment of all of the 3553(a) factors and the purposes of sentencing. In the circumstances of this case, my decision is based on an assessment of all of those factors, but I'd like to highlight just a couple of the principal reasons for my downward variance here:

First, I believe that the likelihood of personal recidivism is extremely low;

Second, I think, as I'm about to comment upon, that a downward variance is appropriate in order to avoid unwarranted sentencing disparities; and

Third, I believe that a downward variance is appropriate given the defendant's responsible acceptance of liability or responsibility in this case and his, I accept, heartfelt remorse for his decision to engage in this conduct.

I've considered the need to avoid unwarranted sentence disparities.

Having considered all of the sentencing factors, I believe that the sentence is appropriate for him. This factor does weigh significantly in my decision. As I've described, two of the U.S. taxpayers involved in the scheme received amnesty for good, programmatic reasons. The consequence of

that is that they have not suffered consequences other than the need to repay the tax losses with penalties and interest.

The other U.S. taxpayer involved received a nonincarceratory sentence. The defendant, I believe, is among the least culpable of the defendants that the government has charged as a result of this conduct in this case. None of the others have yet faced jail time. I think it would be disproportionate to impose a substantial incarceratory sentence on the defendant, given that those who, in my view, are substantially more culpable than he have not yet been jailed.

I should pause here to say the fact that I'm sentencing the defendant here in this way is very much a result of my assessment of the totality of the circumstances. Mr. Walchli is, in my view, very much the least culpable of the codefendants. I do not expect that my assessment of all of these factors would weigh in the same way with respect to the codefendants who have not accepted responsibility and instead have chosen to elude justice and may have been more substantially implicated by their involvement in this scheme. So this is a decision that applies to this defendant, given my assessment of all of the factors with respect to him alone.

I've considered the need to provide restitution to any victims of the offense.

This is really not a factor in this case because, as I understand it, the U.S. taxpayers who participated in the

scheme have already satisfied the government's tax loss.

With that, let me ask the defendant to please rise for the imposition of sentence.

It is the judgment of this Court that you be sentenced to time served.

Following the guidance of Section 5D1.1(c), I'm not going to impose a term of supervised release.

I've considered all of the factors set forth in Section 5E1.2(d) and conclude that Mr. Walchli should pay a fine in the amount of $50,000. I believe that this is necessary in order to ensure just punishment. The defendant has the financial means to satisfy a fine in this amount. Given the nature of his offense and the financial capacity, a fine in this amount, I believe, is appropriate.

The defendant must pay a total special assessment of $100, which shall be due immediately.

Counsel for the United States, I understand that the government is not seeking forfeiture or restitution in this matter. Is that correct?

MS. DAVIS: That's correct, your Honor.

THE COURT: Thank you.

Counsel, any view regarding the time that I should establish by which the defendant must satisfy the fine?

Counsel for defendant.

MR. TEMKIN: Your Honor, I think if we could have a

week, we should be able to do it much faster, but I just don't know in terms of wire transfers and the like.

THE COURT: That's fine.

The fine is payable no later than April 12, which I believe is next Friday.

Counsel, does either counsel know of any legal reason why this sentence shall not be imposed as stated?

Counsel for the United States.

MS. DAVIS: Your Honor, the answer to that is no, but I can't let one of your comments go without being addressed because, frankly, it's a huge slap in the face personally and to the Department of Justice that we were, quote, in no rush to put a stop to this.

This case took thousands of hours to develop and prosecute. It took many months --

THE COURT: I'm sorry, counsel. Let me just pause you.

I'll give you the opportunity to criticize the Court right after I finish the sentencing.

MS. DAVIS: Thank you, your Honor.

THE COURT: Is this something that goes to the sentencing?

MS. DAVIS: Not directly, your Honor.

THE COURT: Thank you.

MS. DAVIS: Thank you.

THE COURT: Do you wish for me to comment on this? If you want to finish your remarks, please feel free.

Go ahead, understanding that I will respond.

MS. DAVIS: Your Honor --

THE COURT: What do you want to say to the Court?

MS. DAVIS: Your Honor, it's meant with the most respect, but this was not for lack of effort on the part of the government.

THE COURT: Did I say that, counsel?

MS. DAVIS: That was what I heard, and perhaps I misheard.

THE COURT: Thank you.

What's the takeaway that you're presenting to the Court, counsel for the United States? What are you asking for?

MS. DAVIS: I just want the record to be clear that the government did not sit on its hands with this case, your Honor.

THE COURT: Thank you.

I'll comment on that.

Anything else, counsel for the United States, that's pertinent to this sentencing?

MS. DAVIS: No, your Honor.

THE COURT: Thank you.

Is that pertinent to the sentencing? Is this a legal reason why the sentence should not be imposed as stated?

MS. DAVIS: No, your Honor.

THE COURT: Thank you.

Is there anything else that the government wishes to present to the Court in connection with the sentencing?

MS. DAVIS: No, your Honor.

THE COURT: Thank you.

We'll talk about this issue after the sentencing is completed.

Counsel for the defendant, is there any legal reason why the sentence shall not be imposed as stated?

MR. TEMKIN: No, your Honor.

THE COURT: Thank you.

The sentence as stated is imposed. I find the sentence to be sufficient but not greater than necessary to comply with the purposes of sentencing set forth in 18 U.S.C. Section 3553(a)(2).

Thank you very much. You can be seated.

You have the right to appeal your conviction and sentence, Mr. Walchli, except to whatever extent you may have validly waived that right as a part of your plea agreement. The notice of appeal must be filed within 14 days of the judgment of conviction. If you're not able to pay the cost of an appeal, you may apply for leave to appeal *in forma pauperis*. If you request, the clerk of court will prepare and file a notice of appeal on your behalf.

Good.

Any other applications at this time?

Counsel, first, for the United States.

MS. DAVIS: No, your Honor.

THE COURT: Thank you.

Counsel for defendant.

MR. TEMKIN: Your Honor, we will present to your Honor as soon as possible a request that your Honor exonerate the bail. So we will hopefully get that down to your Honor or submit it via ECF later today, since Mr. Walchli is in the country now, and I don't know if he needs to appear to address the cash bail issue.

THE COURT: Thank you.

MR. TEMKIN: Thank you.

THE COURT: Fine. Good.

Counsel for the government, let's discuss. What would you like to raise with THE Court?

MS. DAVIS: Nothing further, your Honor.

THE COURT: Thank you.

To the extent that you took from my comment that I take issue with the government's efforts here, that is incorrect. I hope that you appreciate that at the very beginning of my comments, counsel, I specifically pointed to the seriousness of this offense and I specifically applauded the government's efforts to prosecute such crimes. So I

apologize if you and the Department of Justice, as you just stated, the Department of Justice takes issue with my comments. I apologize if that is the case.

Is it the case that the Department of Justice takes issue?

MS. DAVIS: Your Honor, I can only speak for myself.

THE COURT: Thank you.

But before you spoke for the Justice Department. Is that right?

MS. DAVIS: I am a representative of the Department of Justice, yes, your Honor.

THE COURT: Thank you.

Good.

This proceeding is adjourned. Counsel for the government we'll proceed going forward.

Anything else before I step down?

Counsel for the government.

MS. DAVIS: No, your Honor.

THE COURT: Thank you.

Counsel for defendant.

MR. TEMKIN: No, your Honor.

THE COURT: Very good.

Thank you.

This proceeding is adjourned.

(Adjourned)